

In the United States District Court
For the Eastern District of Pennsylvania

United States

v

Joseph P. Totera II (Po) Sc)

Criminal Section

no 15-231

Pro Se Motion For Dismissal of
Indictment for Brady violation

1) Procedural Background

- 1) On March 2, 2017, status conference was held
an order for the government to produce all discovery
except Tex material by March 7, 2017
- 2) A motion to continue was filed by Joseph P. Totera II
for a continuance of 150 days from the April 7, 2017
deadline of pre-trial motion and trial to follow.
- 3) 5 discs of discovery was given on March 13, 2017
where defendant viewed 1000 of pages of text messages, FBI reports
audio recordings, search warrants and over 26,000 pictures which
needed to be reviewed at the FBI headquarters
- 4) On April 7, 2017 another disc was received
with grand jury transcripts and thousands of pages of
blank email headers.

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5) The government has chosen by order not to ask for any content of any email, text, messages, chat messages of either defendant, or complaints, PS, PS+IS where information of exculpatory nature is located.

6) On April 7, 2017 the Honorable Judge Peppers ordered a new scheduling order for all pre-trial motions were due by June 16, 2017 and a trial date of July 31, 2017 was set not the 150 day that was originally asked for.

7) On May 5, 2017 Defendant Joseph P. Bero II filed an expert motion for an IT expert to go through vast amount of discovery, for missing documents, pictures, data, records by, meta data, kik messages, emails that are missing and to organize data.

8) As of July 5, 2017 no ruling has been made for the computer expert.

9) On May 30, 2017 defendant received 3 more videos which ~~was~~ were not able to be viewed because the movement did not work in a viewable format.

9) On June 5th the study counsel printed most of the new discovery and delivered to defendant

10) There were no Bates stamps attached to the original discs so a new disc was sent on or about June 6, 2017 by the office of Attorney General.

11) The defendant then filed a motion for this first discovery violation and had a status conference on June 2, 2017.

12) At the status conference the government proceeded to make excuses that the late discovery was due to the fact that it was to be viewed because of redaction at FBI headquarters

13) The only items that were to be viewed at the FBI headquarters were the pictures, anything else with complainant's name could have been redacted.

14) After viewing discovery the complainant's names and addresses and telephone numbers were still in the discovery that was received so the redaction is moot

- 15) An appointment was made to view the said pictures on Monday and Tuesday on June 26, 2017 & June 27, 2017
- 16) Judge Peppers ordered a 3 week continuance for defendant's motion deadline from June 16, 2017 to July 7, 2017
- 16). The Prosecutor motions were due on June 16, 2017 and response was due on June ^{30th} 20, 2017
- 17) Defendant did not receive the motion in limine until June 29, 2017 while at the meeting at the FBI headquarters to review the redacted pictures
- 18) Defendant requested and filed another motion to extend the answer deadline which was denied and the defendant did not have ample time to answer motion to provide a complete defense.
- 19) While viewing the unredacted discovery at FBI headquarters on June 29, 2017 & June 30, 2017 it was not just the pictures that were being viewed. There was a massive amount of text messages and other

information that was not turned over to defense.

20) After spending over 10 hrs with study council reviewing the new discovery & pictures we were able to get about half way done just try to count and cataloging them.

21) The pictures are not even late stamped so it is impossible to

22) without a IT report it is impossible to get a fair trial and prepare a complete defense.

23) The newest discovery violation was not known until matching up the discovery discs provided on March 13, 2017 and June 4, 2017 by study council in hard copy format.

24) The discovery has been manipulated by the government.

The discovery that was received on March 13, 2017 is materially different than the discovery on June 5, 2017

25) Text messages have materially changed, pictures sent have materially changed, dates, times have changed by seconds minutes even hrs.

31) Lines of text have been altered, ~~some~~ the dialogue is now different. Lines of text were added.

32) Time stamps have changed of when text was sent and received, pictures of when they were sent and received.

33) This entire case is based on these text message conversations and when and where pictures were sent

34) Since the data has been manipulated there is no way to know which dialogue is valid or both have been altered. It is impossible to prepare a defense without knowing the validity of the dialogue.

35) Since the prosecution is basing the entire case on the text messages and pictures sent and received, now knowing that the data has changed materially, any text message could have and was manipulated to suit the prosecutions case

36) Not only was this a Brady violation there is a 5th amendment prosecutorial misconduct due process violation

The prosecutor plays a special role in the search
 for the truth in criminal trials. *Strickler v Green*,
 527 U.S. 263, 281 119 S.Ct. 1936, 144 L. Ed. 2d 286
 (1999) "Within the federal system" the United States
 Attorney is the representative not of an ordinary party
 to a controversy, but of a sovereignty whose obligation
 to govern impartially is as compelling as its obligation
 to govern itself; and whose interest, therefore, in a criminal
 case prosecution is not that it shall win a case, but that
 justice shall be done." *Id.* (quoting *Beyer v United States*,
 295 U.S. 78, 88, 55 S.Ct. 629, 79 L. Ed. 1314 (1935)
 Courts, litigants and jurors properly anticipate that
 (obligations to refrain from improper methods to secure
 a conviction)... plainly resting upon the prosecuting
 attorney, will be faithfully observed," and,
 prosecutor's dishonest conduct or unwarranted concealment
 or should attract no judicial approbation. Banker that the

540 U.S. at 694, 696 (quoting Beyer, 295 U.S. at 88

37) Since the defendant has taken over his case he has been hampered by the prosecutor and the court for deciding to represent himself.

38) The Prosecutors failure to request all the email content, text messages from providers, ATT, Verizon, kik, google, skype from both parties, the late turning over of discovery, not turning over all the discovery and now to actually manipulating and changing the original discovery given, it is impossible to prepare a competent defense in the upcoming weeks.

This discovery violation is so egregious that the only remedy is dismissal or suppression of all text messages from kik, skype, aol etc.

39) The defense is providing 4 different exhibits showing pages of both discoveries and which date has changed materially.

38) There are so many discrepancies that it is impossible to determine what is real and what is not real

39) The discovery is so tainted that the government could have changed any of the text messages in any order to make the government's case

40) No witness can testify to the validity of the messages of the text operators sent because of the noise amount of conversation. When one sentence can make the difference in an acquittal or conviction. No one can remember what was said from 5 years ago. There are gaps of days and hrs in the conversation. There are text with only one person talking and that person is having a conversation with someone else but there is only one person's speaking and you can't tell what is being said in return.

42) The Supreme Court provided that prosecutorial misconduct, such as government corruption of the truth finding process, can result in a deprivation of Due process. *Ray v United States*, 588 2d 601, 603 (9th Cir. 1978; see also *United States v Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1970) *Giglio v United States*, 405 U.S. 150, 153, 92 S.Ct. 763, 31

43) The government can not claim mistake or error in not asking for context of text or emails, the government can not claim error in withholding non pictures out of discovery because they deem them not relevant. The government can not claim error in manipulating the data. If one line was changed one time error might be considered or if the same error occurred over and over. These are different ~~are~~ manipulations, Time stamps, changed, sentences, switched, adding text,

deleting text. Gaps in conversation. 2 that that
 appear out of the blue after talking for 90 min
 then a gap of almost 2 hrs.

Again enclosed are 4 exhibits with date manipulation
 Joseph P. Tetero II Pro Se respectfully asks the court
 to either dismiss the charges or exclude all messages

~~or~~

Example

Exhibits 1

Four hour diff between UTC + EDT seconds
 min show match always

New Discovery

Old Discovery

1) Those days (4/17/2013, 3:56:48 PM (UTC))

1) Those days 11:56:48

2) Guess who towards wife acting partner was

2) Guess who towards wife

for two years (4/17/2013, 3:58:08

acting partner was for two years

wrong
 time off

4/17/2013 (11:57:57)

51 sec time diff

3) Who (4/17/2013, 3:58:14)

match

who (11:58:14)

4) She acts? (4/17/2013, 3:58:17)

match

She acts? (11:58:17)

5) She was taking a lot of classes

She was taking a lot of classes

to try years ago (3:58:51)

wrong
 time

to try years ago (11:58:43)

8 sec diff

6) sooooo

4/17/2013 3:58:59

wrong

she still does to

11:58:54

line change time manipulated

New

Old

7) Who was it (4/17/2013 3:59:02) Daman (11:59:01)
 Line & time wrong

8) She still does tv (4/17/2013 3:59:03) Who was it (11:59:02)
 Line & time wrong

9) Daman (4/17/2013 3:59:10) Ian Somerhyder (11:59:21)
 Line & time wrong

10) Ian Somerhyder (3:59:21) aHHHH I hate Her
 11:59:40

time & line wrong

11) aHHHH I Hate Her (3:59:40) Yes (12:00:07)
 Time & line off

12) Yes (4:00:19) Here in, seven min. bc.
 Time & line off cut and ready
 12:00:21

13) Here in, seven min. bc. cut
 and ready (4:00:30)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 15 - 291
	:	
JOSEPH TOTORO	:	

CERTIFICATE OF SERVICE

I, Michael Drossner, Esquire, standby counsel to defendant Joseph Totoro in the above-captioned matter, hereby certify that on this 7th day of July, 2017, I caused a true and correct copy of the below document to be served by ECF upon Priya DeSouza, Esquire, Assistant United States Attorney, United States Attorney's Office, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106-4476:

(1) Motion to Dismiss Indictment due to Brady Violations.

Respectfully submitted,

HALIM DROSSNER, P.C.

/s/ Michael Drossner

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